

PLM-II

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195383

DATE: November 6, 1979

MATTER OF: AT2 John T. Ranazzi, USN

DIGEST: 1. A Navy enlisted member required to pay child support by a court order deposited the support payments in an irrevocable trust with the child as beneficiary when his former wife refused to accept support payments. The member is not entitled to basic allowance for quarters at the with dependent rate on behalf of the child in view of the determination by responsible Navy officials that a dependency status has not been shown by payments into trust in lieu of direct support payments.

2. Under 37 U.S.C. 403(h) (1976) determinations of dependency for basic allowance for quarters for enlisted members of the uniformed services may be made by the Secretary concerned, or his designee, and such determinations are final and not subject to review by the General Accounting Office or the courts, except in cases of fraud or gross negligence.

Claim by Military Member

In this case a divorced member of a uniformed service claims for basic allowance for quarters (BAQ) at the with dependent rate on the basis that he is required by a court order to pay child support although the former spouse who has custody of the child, refuses to accept support payments. Responsible service officials have refused to accept the member's payments to an irrevocable trust with the child as beneficiary as sufficient evidence of support of the child to determine its dependency on him for BAQ purposes. In these circumstances we find that the BAQ may not be paid.

The question was presented here upon a request for an advance decision from the Disbursing Officer, Naval Air Station, Moffett 0603283 Field, California, forwarded here by the Navy Accounting and Finance Center and assigned submission number DO-N-1324 by the Department of Defense Military Pay and Allowance Committee. 0603283

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On December 7, 1976, Aviation Electronics Technician Second Class John J. Ranazzi, a member of the United States Navy, received a final divorce. He was ordered to pay \$100 per month for the support of a minor child. Sometime in March 1978, the former wife informed the Navy Family Allowance Activity that Mr. Ranazzi had provided no support for the minor child since April 1977. The Activity notified Mr. Ranazzi's commanding officer in June 1978 that Mr. Ranazzi is considered as a member without dependents for BAQ purposes beginning May 1, 1977, since information of record indicated that he provided no support for his claimed dependent since the end of April 1977. DLG 00 793

In explanation to the charge that he had paid no child support, Mr. Ranazzi in a letter to the Navy Family Allowance Activity asserted that because of his former wife's refusal to accept support payment and her address being unknown he was ordered by the court to deposit child support payments in a trust fund with his and the child's name. Thereafter, an account was established as ordered by the court at the California Canadian Bank in Sunnyvale, California.

After receipt of Mr. Ranazzi's letter of June 23, 1978, the Activity notified his commanding officer that the information supplied by Mr. Ranazzi was not sufficient to approve his claim for BAQ and that the member's claim would be reconsidered upon receipt of proof of support being furnished to the custodian of the minor child.

In an attempt to satisfy the requirements of the Navy Family Allowance Activity an irrevocable trust was established by Mr. Ranazzi's attorney and submitted to the Activity with the attorney as trustee and the minor child as the sole beneficiary. The Activity, without commenting upon the sufficiency of the irrevocable trust, on April 12, 1979, reported to Mr. Ranazzi's commanding officer that it had been unable to contact the former wife and that in the absence of evidence that child support was actually provided during the period in question, there was no basis to allow increased BAQ and that the former determination disallowing BAQ to Mr. Ranazzi was to be continued. The Activity suggested that Mr. Ranazzi might apply for remission of indebtedness or waiver of the amounts of BAQ paid to him from May 1977 through June 1978.

Under 37 U.S.C. 403 (1976), a member of the uniformed services who is entitled to basic pay is entitled to BAQ at the "with dependents" rate when he has dependents and they are not assigned to appropriate Government quarters. The allowance takes the place of Government furnished quarters, and, at least partially, reimburses the members concerned for the expense of providing private quarters for themselves and their dependents, where Government quarters are not available. However, BAQ at the "with dependents" rate is not paid as a bonus merely for the technical status of being married or a parent. 52 Comp. Gen. 454 (1973); B-154312, June 25, 1964; 42 Comp. Gen. 642 (1963).

We have held that the statutory provisions generally relieve a member claiming BAQ on account of a lawful spouse or an unmarried child of the burden of proof that the spouse or child is in fact dependent upon the member for their support. See 23 Comp. Gen. 71 (1943), and 22 Comp. Gen. 1145 (1943). That general rule, however, is not free from exceptions and, in light of the basic purpose of BAQ, we have consistently held that in the absence of a showing of contributions by the member to the support of his wife or children, entitlement to quarters allowance as a member with dependents is not authorized where the member has been absolved of responsibility to support them. 38 Comp. Gen. 89 (1958) and 23 Comp. Gen. 71, supra.

In addition, however, 37 U.S.C. 403(h) (1976), provides as follows concerning determinations of dependency for enlisted members under the BAQ statute:

"(h) The Secretary concerned, or his designee, may make any determination necessary to administer this section with regard to enlisted members, including determinations of dependency and relationship, and may, when warranted by the circumstances, reconsider and change or modify any such determination. This authority may be redelegated by the Secretary concerned or his designee. Any determination made under this section with regard to enlisted members is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence." (Emphasis added.)

It appears that the Navy Family Allowance Activity has been delegated the authority under this provision to determine dependency for Navy enlisted members such as Mr. Ranazzi. Department of Defense Military Pay and Allowances Entitlements Manual, paras. 30201 and 30203, and Table 3-2-2, Rule 1.

The record before us is incomplete in that there is no evidence of the court order which required Mr. Ranazzi to deposit support payments in a joint account with the minor child. Further, it is noted that the former wife is presently married to a service member. However, there is no information on whether or not the former wife (with the child) and her present husband were at any time in question housed in Government quarters.

Several cases have arisen in the past in which the dependents of a divorced or separated member are provided housing by the Government not as a result of the status of the member claiming BAQ, but as a result of the status of the other spouse. Under applicable law and regulations, it has generally been held that a member may not be paid BAQ at the with dependent rate when the dependents who would justify such payment are quartered in Government housing at no expense. This rule has been applied even when the support payments made by the claiming member are not diminished. 58 Comp. Gen. 100 (1978).

Consistent with the basic purpose of increased BAQ being to at least partially reimburse the member for the expense of providing private quarters for dependents, and not to grant the higher allowance as a bonus, we have held that there must be a showing that the increased sum is being used for the support of the dependents. Even where there is a court decree requiring child support payments, in the absence of a definite showing of the disposition of the payments and whether they are being used for the support of dependents, we have held that the matter admits of too much doubt to authorize crediting the member with increased BAQ. 52 Comp. Gen. 454.

In the present case it may appear that Mr. Ranazzi is placed in a difficult position, being required by court order to pay child support which his former wife, who has custody of the child refuses to accept, and being denied increased BAQ by the Navy. The fact remains that without some evidence that the increased BAQ is used for the support of the dependent child, and in view of the question concerning whether the child has been living in Government quarters,

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it does not appear that the Navy Family Allowance Activity determination that increased BAQ may not be paid is incorrect. In any event, in the absence of a determination of dependency by appropriate Navy officials, there is no authority for payment of increased BAQ. Under 37 U.S.C. 403(h) a determination of dependency by the appropriate Navy official is final and not subject to review by this Office. B-192969, December 15, 1978.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

For the Comptroller General
of the United States